IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5062 of 2005

Tausif Shermohammad Khan and Anr. ..Applicants

V/s

State of Maharashtra ..Respondent

Shri Uday Warunjikar with Rajendra Thimbare for Applicants

Shri A.S.Gadkari,APP for Respondent

CORAM:A.S.OKA,J.

DATED:19th August 2005

P.C.:-

1. Heard Advocate for the Applicants and learned A.P.P. for Respondent.

2. Advocate for the applicants submitted that present age of applicant no.1 is only 19 years and age of the applicant no.2 is 21 years. He submitted that Section 307 of IPC cannot be attracted as there is only one CLW over the neck of the injured and there is one abrasion. He submitted that at the most Section 326 of IPC will be attracted. He submitted that no specific role has been ascribed to the applicants.

3. The learned A.P.P. pointed out that blow is given on neck and considering the fact that size of said blow is 3 cm x 3 cm x 2 cm on vital part like neck, Section 307 is certainly attracted. He pointed out that there is a recovery of weapons at the instance of the applicants and therefore they are not entitled to enlarge on bail.

4. I have considered the submissions. The FIR is registered by the injured himself and in FIR he has stated that assault on his neck was made by one person by using Chopper. He has named one Samir and his 3 unknown associates in FIR. FIR clearly indicates that only one person assaulted him by Chopper on his neck and 3 other persons were accompanying the said person who made the assault. In test identification parade, the first informant has merely identified the applicants without ascribing any specific role. He has identified the applicants as the persons who were present at the place of incident. Therefore it is very difficult to believe at this stage that the applicants have assaulted the injured by using a chopper.

5. The investigation has been completed and charge sheet has been filed. Merely because co-accused is absconding is no ground to deny the bail. Considering the aforesaid

material on record and considering that no other criminal antecedents of the Applicants are pointed out, I pass the following order.

i. The Applicants shall be enlarged on bail in connection with C.R.No.265 of 2005 registered at Swargate Police Station, Pune, subject to furnishing a personal bond of Rs.10,000/- each with one or two local sureties in the like amount. The Bail is granted subject to condition that the applicants will record attendance twice a week with the concerned police Station i.e. Swargate Police Station, Pune, till the conclusion of trial.

ii. The Bail is granted subject to condition that the applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iii. The Applicants shall cooperate with the learned trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

iv. Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v. Application is disposed of in above terms.

vi. The parties to act upon an authenticated copy of this order.

(A.S.OKA, J.)